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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

In re MICHAEL M., a Person Coming
Under the Juvenile Court Law.

B144849
(Los Angeles County
Super. Ct. No. MJ04286)

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHAEL M.,

Defendant and Appellant.

APPEAL from an order of the Superior Court of Los Angeles County. John V. Paventi, Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Katharine Eileen Greenebaum, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Kenneth N. Sokoler and Zee Rodriguez, Deputy Attorneys General, for Plaintiff and Respondent.

Michael M. appeals from the order committing him to the California Youth Authority after the juvenile court found that a previous disposition had been ineffective to rehabilitate him. In 1995, he was declared a ward of the court (Welf. & Inst. Code, § 602) based on his no contest plea to allegations he committed battery (Pen. Code, § 242). In 1997, he was declared a ward of the court based on his admissions that he had committed grand theft from the person (Pen. Code, § 487, subd. (c)) and felonious assault (Pen. Code, § 245, subd. (a)(1)). When appellant admitted those allegations, he was told his maximum confinement could not exceed 4 years 10 months. In 1998, he was again declared a ward of the court based on his no contest plea to allegations he drove recklessly while evading the police (Veh. Code, § 2800.2), left the scene of an accident (Veh. Code, § 20002), and drove without a license (Veh. Code, § 12500, subd. (a)).

On July 14, 1998, appellant was placed in a long-term camp program. Conditions of that placement included requirements that appellant obey his teachers, camp staff, and probation officers. The placement was based on the 1997 findings that he had committed grand theft from the person and felonious assault. The juvenile court ordered that his physical confinement not exceed four years.

On July 7, 2000, a petition was filed under Welfare and Institutions Code section 777. At the hearing on that petition, the court found that appellant had refused to obey a deputy probation officer and on two occasions failed to obey a teacher. On August 7, 2000, the court committed appellant to the California Youth Authority. In orally stating the disposition, the court announced that appellant could not be confined more than four years. The minutes of that dispositional hearing, however, stated that the maximum confinement period was 4 years 10 months. The minutes indicate that calculation was based on an aggregation of maximum confinement periods of four years for the felonious assault, eight months for the grand theft, and two months for the battery.

Appellant's attorney filed an opening brief in which no issues were raised. After reviewing the record as required by *People v. Wende* (1979) 25 Cal.3d 436, we requested briefing on whether the juvenile court selected a maximum confinement period of four years or a maximum confinement period of 4 years 10 months when it committed

appellant to the Youth Authority. We also requested briefing on whether the juvenile court should be directed to amend the minutes of the August 7, 2000, dispositional hearing to conform to its oral pronouncement regarding the maximum confinement period.

Appellant contends the court selected a maximum confinement period of four years. Appellant argues that since the court set the maximum confinement period at four years when it ordered the camp placement, the juvenile court should be directed to amend the minutes of the August 7, 2000, dispositional hearing to conform to its oral pronouncement.

The People contend that because the minutes for the August 7, 2000, dispositional hearing include a calculation aggregating periods of physical confinement, the minutes reflect the court's actual order.

In *People v. Mesa* (1975) 14 Cal.3d 466, 471, the Supreme Court held that since rendition of judgment is an oral pronouncement and entry of a judgment in the minutes a clerical function, a discrepancy between a judgment as orally pronounced and as entered in the minutes is presumably the result of clerical error.

In *People v. Smith* (1983) 33 Cal.3d 596, the court declared a mistrial after the jury unanimously found the defendant not guilty of murder but deadlocked on whether she committed voluntary manslaughter. No verdict forms had been signed. The court orally declared the case would be dismissed to avoid double jeopardy. Although the minutes of the hearing on the motion stated the court found the defendant in jeopardy, the minutes recited that the case was dismissed under Penal Code section 1385. In that context, the Supreme Court stated that when there is a conflict between the reporter's transcript and the clerk's transcript and the conflict cannot be harmonized, the recitals in the minutes may prevail against contrary statements in the reporter's transcript if the circumstances indicate the recitals in the minutes should be given greater credence. (*Smith, supra*, 33 Cal.3d at p. 599.) In that case, however, the court concluded that there was no irreconcilable conflict. (*Ibid.*)

In *In re Ricky H.* (1981) 30 Cal.3d 176, the minor admitted he had committed assault by means of force likely to produce great bodily injury, an offense punishable alternatively as a felony or a misdemeanor (a wobbler). The minutes of the dispositional hearing recited that the minor was committed to the Youth Authority for commission of a felony, but the reporter's transcript of the dispositional hearing did not reflect that the court found the offense a felony. (*Id.* at p. 191.) The Supreme Court remanded the matter to the juvenile court for clarification whether the court intended to exercise its discretion to declare the offense a felony. (*Id.* at p. 192.) At the dispositional hearing in *In re Manzy W.* (1997) 14 Cal.4th 1199, the juvenile court committed the minor to a felony-level term for a wobbler, but did not mention its discretion to declare the offense a misdemeanor. (*Id.* at p. 1210.) Relying on *In re Ricky H.*, the Supreme Court concluded remand was appropriate to enable the juvenile court to exercise its discretion, because it was unclear from the record whether the court was aware it had discretion to set a misdemeanor-length maximum term of physical confinement. (*In re Manzy W.*, *supra*, 14 Cal.4th at pp. 1207-1212.)

When the court sustains a petition filed under Welfare and Institutions Code section 777, the court has discretion to aggregate terms for counts in previously sustained wardship petitions when the court sets the maximum term of physical confinement. (*In re Ernest R.* (1998) 65 Cal.App.4th 443, 446-449.) Before a juvenile court may set a maximum period of physical confinement by aggregating terms on multiple counts or wardship petitions, however, the minor must receive notice that the People are requesting aggregation. (*Id.* at pp. 449-450.) In the present case, at the August 7, 2000, dispositional hearing, neither party argued whether the court should aggregate the maximum periods of physical confinement on multiple counts or petitions. The Welfare and Institutions Code section 777 petition did not request aggregation. As previously noted, the order placing appellant in camp based on his commission of grand theft from the person and felonious assault set the maximum physical confinement period at four years. Under these circumstances, we conclude that the reporter's transcript of the

August 7, 2000, dispositional hearing accurately reflects the court's determination of the appropriate maximum confinement period.

The order committing appellant to the California Youth Authority for a maximum confinement period of four years is affirmed. The juvenile court is directed to amend the minutes of the August 7, 2000, dispositional hearing to reflect that the maximum period of physical confinement is four years.

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_____, J.
DOI TODD

We concur:

_____, P.J.
BOREN

_____, J.
ASHMANN-GERST